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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,276	08/23/2006	Gordon O. Smith	85387-102 RWD	4300
23529	7590	04/29/2009	EXAMINER	
ADE & COMPANY INC. 2157 Henderson Highway WINNIPEG, MB R2G1P9 CANADA			LE, MARK T	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,276	Applicant(s) SMITH ET AL.	
	Examiner MARK T. LE	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the container carrying car supporting the container, as recited in instant claim 18, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 1-20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2, the expression "conventional intermodal containers" is indefinite because it is not clear as to what structures are considered as conventional.

Claim 16 is not clear. It is believed that the expression "hatch cover" in line 2 should be changed to read -- the gate member --.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Barr (US 4,995,522).

Barr discloses a container stackable with other intermodal containers, and having all of the features as recited in the instant claims, including hoppers at the bottom of the container, as shown in Figures 2 and 3 of Barr, lower gate members 38 located below the hoppers, upper hatch covers 34 on top of the container, a structural frame having load bearing members that include corner posts, and top and bottom rails that surround all sides of the container, corner connectors for locking with other intermodal containers (see Figure 1 of Barr), sidewalls 17,18 being substantially planar and formed by structural sheeted material that spans between posts and substantially flush with exterior sides of the structural frame (see Figures 1 and 5 of Barr).

Regarding instant claim 15, note that the container of Barr, as shown in Figures 1 and 2, has four hopper compartments associated with four hatch covers 34 and four gate members 38.

Regarding instant claims 16-17, consider Figures 1 and 2 of Barr, wherein, hatch covers 34 and gate members 38 are contained within the area bounded by the container frame structure, as claimed.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barr (US 4,995,522) in view of Yurgevich (US 4,944,421).

Barr is applied above.

Regarding the instant claimed intermediate posts, as recited in instant claim 7, consider intermediate posts 28 of Yurgevich. In view of Yurgevich, it would have been obvious to one skilled in the art to provide additional intermediate posts, similar to that taught by Yurgevich, in the structure of Barr so as to reinforce the walls and provide a

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stronger container. Regarding the intermediate post being equally spaced between the corner posts, note that the right and left intermediate posts 28 of Yurgevich, as shown in Figure 1 of Yurgevich, are located between the right and left corner posts, and are equally spaced at least from their respective right and left corner posts; therefore, the broad limitation of the instant claim is considered met.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barr (US 4,995,522) in view of Copas (US 5,190,182).

Barr is applied above.

Regarding the instant claimed gate and linkage member being mounted on the hopper, as recited instant claim 10, consider gate 14 and associated operating linkage 20 mounted on the hopper as shown in Figure 1 of Copas. In view of Copas, it would have been obvious to one skilled in the art to substitute a gate operating device, similar that taught by Copas, for that of Barr so as to achieve an expected advantage thereof, such as a simpler construction.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barr (US 4,995,522) in view of Labelle (US 6,105,805).

Barr is applied above.

Regarding the instant claimed hatch cover and linkage member being mounted on the compartment for operating the hatch cover, as recited instant claim 11, consider gate 16 and operating linkage 18 of Labelle. In view of Labelle, it would have been obvious to one skilled in the art to further include hatch cover operating mechanisms,

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similar to that taught by Labelle, in the structure of Barr for allowing convenience operation of the hatch covers.

9. Claims 12-14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barr (US 4,995,522) in view of Labelle (US 6,105,805) and Copas (US 5,190,182).

Bar and Labelle, and Bar and Copas are applied above.

Regarding the instant claimed linkage members being accessible for operations from the sides of the container or with the containers arranged in a stacked configuration, note that the structure of Bar, as modified in view of Labelle and Copas, have operating linkage members that are considered to be accessible for operations, as broadly defined in the instant claims.

Regarding the instant claimed seal members, as recited in instant claim 19, note that closures, such as covers or gates, provided with seal members are well known. Note for example the closure seal at 17, 39 shown in Figure 5 of Copas, and description of the closure seal in lines 16-26, column 3 of Copas, and it would have been obvious to one skilled in the art to provide closure seals, similar to that taught by Copas, in the structure of Barr for associating with the gates and hatch covers of Barr, as modified, so as to provide positive seals to prevent contamination of the product(s) in the container.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barr (US 4,995,522) in view of Antoniou (US 6,012,598).

Barr is applied above.

Regarding the instant claimed container being mounted on a rail car, as recited in instant claim 18, consider Figure 4 and the first paragraph, column 6 of Antoniou;

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wherein, a freight container may be mounted to be transported by vehicle 80 or another mode of transportation, such as by rail. In view of Antoniou, it would have been obvious to one skilled in the art to place the container of Barr on a vehicle, such as a rail vehicle as suggested by Antoniou, for transporting the container as needed.

11. Claims 8-9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barr (US 4,995,522) in view of Schultz (US 4,819,830).

Barr is applied above.

Regarding the instant claimed compartments being partitioned and sealed with respect to one another, as recited in instant claims, such feature is well known. Note for example, the container shown in Figure 1 of Schultz; wherein, different compartments 16 are partitioned by partition members 14 that seals the compartments from each other. Therefore, it would have been obvious to one skilled in the art to partition the container of Barr with partition members, in a manner similar to that taught by Schultz, so as provide isolated compartments for allowing greater flexibility of usages, such as allowing the container to store different products in different compartments as desired.

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1-3 and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 12 of copending Application No. 11681832. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application include features of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK T. LE whose telephone number is (571)272-6682. The examiner can normally be reached on Mon-Fri, between 8:15-4:45 (Teleworking).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Le/
Primary Examiner
Art Unit 3617

mle
4/24/09